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(2011) 08 DEL CK 0325

In the Delhi High Court

Case No : MAC Appeal No. 74 of 2010 and CM No. 2360 of 2010

Smt. Sudershan Devi and Others APPELLANT

Vs

Sh. Sham Kumar and Others RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0325

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : D.V. Goyal, for the Appellant; J.K. Seth, for the Respondent

Final Decision : Disposed Off

Judgement

Indermeet Kaur, J.—The Award impugned is the Award dated 04.03.2009 vide which the learned Tribunal had relied upon the judgment of this Court reported as United India Insurance Co. Ltd. v. Reeta Devi (which has been circulated by the High Court for compliance by the Tribunals); in terms of this judgment, the MACT had awarded compensation on a monthly basis with inflation to follow in the following years for the claimants. Learned Counsel for the Appellant has placed on record the judgment of the Apex Court reported in Special Leave to Appeal (Civil) No. 15796/2009 titled Reeta Devi and Anr. v. United India Insurance Company Ltd. and Anr. decided on 22.02.2010 whereby the judgment of Reeta Devi (Supra) has since been set aside. The Supreme Court in that case had awarded a lump sum payment; concept of monthly installments had been set aside. In the wake of this order, learned Counsel for the Appellant states that his compensation should also now be recalculated.

2. Counsel for Respondent No. 3 in the first instance has refuted the submissions of learned Counsel for the Appellants; his contention being that his liability at a maximum can be fastened at Rs. 5 lakhs; this is in view of the fact that this was special contingency insurance policy with Respondent No. 2. Admittedly no cross-appeal or cross-objections have filed by learned Counsel for Respondent No. 3.

This submission of learned Counsel for Respondent No. 3 thus carries no merit; it cannot be considered.

3. There are certain facts which are not in dispute. The deceased was 45 years of age; he had admittedly died in a road accident which had taken place on 14.05.2006. The salary slip of the deceased shows that he was earning a salary of Rs. 10,829/-; compulsory deduction of tax paid was Rs. 572/-; Rs. 10/- was the amount which was being paid for the general fund; deducting this amount of Rs. 582/- from the salary of Rs. 10,829/-, the salary figure of the deceased was Rs. 10,247/-. In view of judgment of the Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier to be awarded in this case was 14. There is also no dispute that the dependents being 5, deduction was to be made of 1/4th. Since minimum wages has been taken into account to compute the salary of the deceased, in view of the catena of judgments reported in Kanwar Devi and Others Vs. Bansal Roadways and Others, Lekh Raj and Another Vs. Suram Singh and Others, and Dwijendra Nath Roy Vs. Union of India (UOI) and Others, the price rise and cost of index inflation has also to be kept in mind; judicial notice is taken of the fact that in the next 10 years, the minimum wages of the deceased would have doubled.

4. The total figure thus arrived at would read as under:

TOTAL SALARYTOT

Rs. 10,829/-

Minus (deductions)

Rs. 582/-

Rs. 10,247/-

Plus 50%

Rs. 5124/-

Rs. 15,371/-

Minus 1/4th personal expenses

Rs. 3,843/-

Rs. 11,528X12X14= Rs. 19,36,704/-

5. Accordingly a sum of Rs. 19,36,704/- is awarded under the head of ''loss of dependency'' in favour of the claimants. This amount is awarded under the head of pecuniary damages.

6. Learned Counsel for the Appellants states that non-pecuniary damages should also be awarded which also have to be taken care of. Keeping in view the submissions made by learned Counsel for the Appellant, a sum of Rs. 10,000/- is awarded as loss of estate; the claimant is the widow of the deceased; loss of

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consortium is computed at Rs. 10,000/-; funeral expenses is awarded at Rs. 20,000/-. Since there are two children who were minors at the time of accident of the victim, they have undisputedly suffered loss of love and affection of their father. Compensation of Rs. 20,000/- is awarded under this head as well. These amounts will carry interest @ 7.5 % per annum from the date of filing of the petition till the amount is realized.

7. The shares of the Appellants in the award amount shall be read as under:

Appellant No. 1 (widow) - 60%

Appellants No. 2 & 3 (minor children) - 15% each.

Appellant No. 4 (father) - 10%

(i) The Respondent No. 3 is directed to deposit the award amount with UCO Bank, Delhi High Court Branch within 30 days. The deposit be made by means of an cheque drawn in the name of UCO Bank A/c Sundershan Devi, Delhi High Court Branch, New Delhi. Any amount already received by the Appellants is liable to the adjusted against this final amount.

(ii) Upon the aforesaid amount being deposited, the UCO Bank is directed to open a Savings account as well as fixed deposit account in the names of the Appellants. UCO Bank is directed to transfer a sum of Rs. 25,000/- in the Saving account of Appellant No. 1. The shares of Appellants No. 2 and 3 be released to them by transfer of the amount to the Savings Account. The remaining share of Appellant No. 1 and the shares of Appellants No. 2 to 4 kept in fixed deposits for the following periods:

(iii) Appellant No. 1 - FDR (60% share) minus Rs. 25,000/- for a period of five years.

Appellant No. 2 - FDR (10% share) for a period of five years.

Appellant No. 3 - FDR (10% share) for a period of five years.

Appellant No. 4- FDR (10%) share for a period of three years.

(iv) The interest on the first three fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of Appellant No. 1. However, interest on the deposit of Appellant No. 4 shall be paid in his separate account. (v) Withdrawal from the aforesaid account shall be permitted to Appellant Nos. 1 & 4 after due verification and the Bank shall issue photo Identity Card to the Appellants to facilitate identity.

(vi) No cheque book be issued to Appellant Nos. 1 & 4 without the permission of this Court.

(vii) The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Books shall be given to Appellant Nos. 1 & 4 along with the photocopy of the FD Rs.

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(viii) The original Fixed Deposit Receipts shall be handed over to the Appellants at the end of the fixed deposit period.

(ix) No loan, advance or withdrawal shall be allowed on the said Fixed Deposit Receipts without the permission of this Court. However, the Appellants are granted liberty to approach this Court for withdrawal of amount at the time of marriage of Appellants No. 2 to 3.

(x) Half yearly statement of account be filed by the Bank in this Court.

(xi) On the request of the Appellants, the Bank shall transfer the Savings Account to any other branch of UCO Bank in Delhi according to the convenience of the claimants.

(xii) The Appellants No. 1 & 4 shall furnish all the relevant documents for opening of the Saving Bank Accounts and Fixed Deposit Accounts to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

8. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

9. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi through the UCO Bank, High Court Branch under the signature of Court Master.

10. Appeal disposed of.

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